

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BARKAT S. HOODA, M.D.,

Plaintiff,

**ANSWER OF WCA HOSPITAL and
BETSY T. WRIGHT**

vs.

CV: 1:11-cv-00504

W.C.A. SERVICES CORPORATION D/B/A
WCA HOSPITAL and BETSY T. WRIGHT,

Defendants.

The Defendants, W.C.A. SERVICES CORPORATION D/B/A WCA HOSPITAL and BETSY T. WRIGHT, by their attorneys, FELDMAN KIEFFER, LLP, as and for its Answer to Plaintiff's Complaint, allege as follows:

1. Admits those allegations contained in paragraphs 19, 22, 68, 81 & 82 of the Plaintiff's Complaint.
2. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1, 4, 5, 6, 15, 16, 17, 18, 20, 21, 23, 24, 25, 26, 31, 32, 33, 35, 36, 37, 38, 40, 41, 42, 43, 44, 46, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 72, 73, 76, 77, 78, 79, 83, 84, 85, 86, 87, 95, 97, 99, 100, 101, 102, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, & 208 of the Plaintiff's Complaint.
3. Denies the allegation contained in paragraphs 2, 3, 8, 10, 11, 12, 13, 14, 27, 28, 29, 30, 34, 39, 45, 47, 48, 49, 70, 71, 74, 75, 80, 88, 91, 92, 93, 94, 96, 98, 102, 104, 106, 119, 120, 121, 123, 124, 126, 127, 128, 129, 130, 131, 132, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 149, 150, 151, 152, 153, 154, 155, 156, 157, 159, 160, 161, 162, 163, 164, 165, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182,

183, 185, 186, 187, 188, 19, 190, 192, 193, 194, 195, 197, 198, 200, 201, 202, 203, 204, & 205 of the Plaintiff's Complaint.

4. Denies each and every allegation contained in paragraph 7, 9, 89, 90, 199, 206, 207 & 208 of the Complaint, leaving all questions of law for the determination of the Court at the time of trial.

5. With respect to the allegations contained in paragraphs 125, 133, 148, 158, 166, 184, 191, & 196 of the Plaintiff's Complaint, Defendant admits those allegations which are elsewhere admitted, denies those allegations which are elsewhere denied and lacks knowledge or information sufficient to form a belief those allegations which are elsewhere so treated.

6. Denies each and every other allegation not admitted or otherwise denied herein.

FIRST AFFIRMATIVE DEFENSE

7. Plaintiff's Complaint fails to state a claim upon which relief might be granted.

SECOND AFFIRMATIVE DEFENSE

8. Plaintiff's causes of action are barred in whole or in part because none of the alleged acts or omissions of Defendants were in any way the proximate cause of the injuries and damages allegedly sustained by the Plaintiff.

THIRD AFFIRMATIVE DEFENSE

9. The Plaintiff's damages were caused by Plaintiff's failure to take reasonable steps to avoid and/or mitigate harm and damages.

FOURTH AFFIRMATIVE DEFENSE

10. Upon information and belief, the incident complained of in the plaintiff's complaint and the alleged damages were caused in whole or in part by plaintiff's contributory

negligence and/or capable conduct, and not as a result of any negligence and/or culpable conduct on the part of the Defendant.

FIFTH AFFIRMATIVE DEFENSE

11. Upon information and belief, the accident, injuries, and damages for which Plaintiff seeks recovery herein were caused, wholly or in part, by the culpable conduct of other parties over whom Defendants exercise no control and for whose actions the Defendants are not legally responsible. If these Defendants are found liable to the Plaintiff, wholly or in part, said Defendants are entitled to have its liability to the Plaintiff reduced and recovery over and against all such parties in an amount that represents the proportionate share of the liability attributable to such other parties.

SIXTH AFFIRMATIVE DEFENSE

12. Upon information and belief, this Court lacks personal jurisdiction over the Defendants.

SEVENTH AFFIRMATIVE DEFENSE

13. Upon information and belief, the Court lacks subject matter jurisdiction over the Defendants.

EIGHTH AFFIRMATIVE DEFENSE

14. Upon information and belief, Plaintiff has failed to exhaust administrative remedies before bringing this action.

NINTH AFFIRMATIVE DEFENSE

15. Plaintiff's claims are barred since the statements made by the Defendants were truthful.

TENTH AFFIRMATIVE DEFENSE

16. Plaintiff's claim is barred under the doctrine of absolute immunity.

ELEVENTH AFFIRMATIVE DEFENSE

17. Plaintiff's claim is barred under the doctrine of qualified immunity.

TWELFTH AFFIRMATIVE DEFENSE

18. Plaintiff claim is barred because of the absence of malice.

THIRTEENTH AFFIRMATIVE DEFENSE

19. Plaintiff's claim is barred pursuant to the Federal Health Care Quality Improvement Act, 42 U.S.C. §11111, et seq.

FOURTEENTH AFFIRMATIVE DEFENSE

20. Plaintiff's claim is barred pursuant to the Texas Occupations Code §160.010.

FIFTEENTH AFFIRMATIVE DEFENSE

21. Upon information and belief, Plaintiff's claim is barred pursuant to the Texas Lab. Code §103.003 & §103.004.

SIXTEENTH AFFIRMATIVE DEFENSE

22. Plaintiff's claim is barred pursuant to NY Public Health Law §2803-e.

SEVENTEENTH AFFIRMATIVE DEFENSE

23. Plaintiff's claim is barred pursuant to NY Public Health Law §230.

EIGHTEENTH AFFIRMATIVE DEFENSE

24. Plaintiff's claim is barred under the doctrine of laches.

NINETEENTH AFFIRMATIVE DEFENSE

25. Plaintiff's claim is barred under the doctrine of unclean hands.

TWENTIETH AFFIRMATIVE DEFENSE

26. Upon information and belief, Plaintiff's claim is barred because of waiver.

TWENTY FIRST AFFIRMATIVE DEFENSE

27. Upon information and belief, Plaintiff acted in bad faith, thus barring any equitable claim for relief.

TWENTY SECOND AFFIRMATIVE DEFENSE

28. Upon information and belief, Defendants' actions were mandated by state and/or federal law, thus barring any equitable claim for relief.

TWENTY THIRD AFFIRMATIVE DEFENSE

29. Upon information and belief, Plaintiff's claims are barred since any actions or statements made by the Defendants were privileged.

TWENTY FOURTH AFFIRMATIVE DEFENSE

30. Upon information and belief, Plaintiff's claims are barred since any actions or statements made by the Defendants were justified.

COUNTERCLAIM AGAINST BARKAT HOODA, M.D.

31. Plaintiff, BARKAT HOODA, M.D., has made false statements of fact in the Complaint.

32. Plaintiff, BARKAT HOODA, M.D., has made unsubstantiated allegations against Defendants, WCA HOSPITAL and BETSY WRIGHT, in the Complaint.

33. Because of such false statements and unsubstantiated allegations, Defendants allege, upon information and belief, that the Complaint is frivolous.

34. Because of such false statements and unsubstantiated allegations, Defendants allege, upon information and belief, that the Complaint was filed in bad faith by the Plaintiff.

35. Therefore, pursuant to Texas Occupational Code Annotated §160.008(c), Defendants WCA HOSPITAL and BETSY WRIGHT demand defense costs, including court costs, attorney's fees, and damages incurred as a result of the aforementioned civil action.

WHEREFORE, W.C.A. SERVICES CORPORATION D/B/A WCA HOSPITAL and BETSY T. WRIGHT, demands judgment dismissing the Complaint against it, together with costs and disbursements, and in the event of any judgment against W.C.A. SERVICES CORPORATION D/B/A WCA HOSPITAL and BETSY T. WRIGHT, it demands a judgment for indemnity and/or contribution over and against any and all parties for the amount of any such recovery, or a portion thereof, in accordance with the principles of law regarding apportionment of fault and damages, judgment against the Plaintiff defense costs, including court costs, attorney's fees, and damages incurred as a result of the aforementioned civil action, along with costs and disbursements, together with such other & further relief as the Court may deem just and proper.

Dated: July 14, 2011
Buffalo, New York

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